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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,413	02/15/2002	Thurein M. Htoo	800189-11 (6829-60483)	3281

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EXAMINER

RINEHART, KENNETH

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,413

Applicant(s)

HTOO ET AL.

Examiner

Kenneth B Rinehart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-11, 13, 14 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 6-8, 12 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Drawings

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Rits. Rits shows a flask having a structure defining an opening (cap 10 sealing opening, fig. 5); a first filter member disposed in the opening (22, fig. 2); and a second filter member disposed in the opening juxtaposedly to the first filter (26, fig. 2), said first filter member comprises at least one aperture sized to preclude passing of bacteria there through (22, fig. 2, col. 2, line 55), said first filter member comprises a plurality of apertures having an average aperture opening ranging from about 0.10 micrometer to about 0.65 micrometer (22, fig. 2, col. 2, line 55), a retainer ring engaged to the flask for retaining the first and second filter members in the opening (30, fig. 2), said first filter member has a higher flexibility than the second filter member (col. 2, lines 54-58).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 9-11, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Rits. Jones discloses a freeze drying apparatus; and a device disposed in said apparatus for holding substances during freeze drying (col. 7, line 41-50), said device comprising a flask having a structure defining an opening a first filter member disposed in said opening (93, fig. 13), disposing a substance in a flask; positioning the flask in a drying apparatus; and passing a drying medium through a first filter member... for drying the substance (col. 7, lines 35-50), rehydrating the dried substance (col. 7, line 54), exposing the flask to water vapor (col. 7, line 54). Jones discloses applicant's invention substantially as claimed with the exception of and a second filter member disposed in the opening juxtaposedly to the first filter member, and through a second filter member juxtaposed to the first filter member, the flask comprises a transparent structure, viewing the substance through the transparent structure. Rits teaches and a second filter member disposed in the opening juxtaposedly to the first filter member (fig. 2), and through a second filter member juxtaposed to the first filter member (fig. 2) for providing more effective filtration. It would have been obvious to one of ordinary skill in the art to modify Jones by including and a second filter member disposed in the opening juxtaposedly to the first filter member, and through a second filter member juxtaposed to the first filter member as taught by Rits for the purpose of providing more effective filtration. Rits teaches the flask comprises a transparent structure, viewing the substance through the transparent structure (col. 4, lines 5-7) for the purpose of examining the substance to make observations. It would have been obvious to one of ordinary skill in the art to modify Jones by including the flask comprises a transparent structure, viewing the substance through the transparent structure as taught by Rits for the purpose of examining the substance to make observations.

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Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Rits as applied to claim 10 above, and further in view of Sutherland et al. Jones in view of Rits discloses applicant's invention substantially as claimed with the exception of contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance. Sutherland et al teaches contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance (36, 42, fig. 2) for the purpose of accurately controlling the freeze drying process. It would have been obvious to one of ordinary skill in the art to modify Jones by including contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance as taught by Sutherland for the purpose of accurately controlling the freeze drying process to prevent rendering a useless substance.

Allowable Subject Matter

Claims 6-8, 12, 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of art with respect to freeze drying and flasks in general: Fraser et al (4966469), Piunno et al (5154007), Tenedini et al

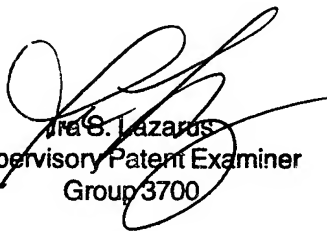
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(6122836), Jones (5732837), Shimizu et al (4595021), Bagshawe (3888629), Lagunna Valderrama (5811060), Bender et al (3474543), Villarejos (4306357), Ogle (4286389), Parkinson et al (4275511), Edelmann (4232453). Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth B Rinehart whose telephone number is 703-308-1722. The examiner can normally be reached on 7:30-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-308-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

KBR
February 7, 2003


Ira S. Lazarus
Supervisory Patent Examiner
Group 3700